

Testimony of Mark Reinstein to House Judiciary Committee re HB 4694-97  
September 12, 2013

Chairman Cotter and Members of the Committee,

Thank you for the opportunity to make comment on House Bills 4694-97 (mental health court bills).

I'm Mark Reinstein, President & CEO of the Mental Health Association in Michigan, the state's oldest advocacy organization for persons experiencing mental illness. I also represent the statewide justice-and-mental health coalition, Michigan Partners in Crisis, consisting of numerous organizational and judicial members, as well as an advisory board of judges, peace officers, prosecutors, defense attorneys, jail administrators, mental health and substance abuse professionals, advocates and others (copy of advisory board roster attached).

The Mental Health Association and Partners In Crisis were pleased to play a significant role in the establishment and continued operation of the so-called state-funded pilot mental health courts. We now welcome and conceptually endorse state statute on mental health courts, but we believe some improvements can and should be made to the bills as introduced. Attached to my testimony are those proposed revisions in their entirety. What I'll do with my verbal testimony is briefly highlight them.

First, looking at technical issues:

\*HB 4694 uses undefined terms that are not otherwise defined in state mental health law (i.e., "mental disorder," "co-occurring disorder" and "licensed clinician"). These terms have to be defined or replaced by terms that have existing legal definitions.

\*HB 4694 also uses the term "serious bodily injury," which has several definitions in state law. This package should clarify which of those other definitions would be the one or ones applying here.

\*HB 4694 includes a term that doesn't exist in Michigan – "the local community mental health department." This should be corrected to "the local community mental health services program(s)."

\*4694 and 4695 appear to contradict each other in terms of how many times someone can be a mental health court participant. Our reading is that one bill says multiple times, and the other says only once. The State Court Administrative Office (SCAO) has told us there was no intent for only one participation opportunity, and that this would be clarified.

Turning to more substantive matters, we see the need for improvement in the following areas:

- ~Court knowledge of a participant's service plan and any objections and/or revisions to it.
  - ~Voluntary participation based on informed consent as a statutory requirement rather than a generalized principle.
  - ~Evaluation should be required to use standardized measures with acceptable reliability and validity.
  - ~Confidentiality of someone who successfully completes a mental health court program should be better protected than what the bills as introduced propose; if you've successfully made it through, your name and the offense that brought you to mental health court should not be transmitted to the state's law enforcement information network.
  - ~All persons successfully completing mental health court should receive an exit evaluation for their potential future service needs.
  - ~Barring the alleged commission of an additionally new crime, failing to make it through mental health court should be prohibited as a sentencing factor for the alleged crime that brought someone to mental health court.
  - ~The package needs to establish that the state will have a mental health court advisory committee, and that this committee will include consumers, family members and advocates, consistent with best-practice guidelines in the mental health court literature. We recognize that SCAO presently has an advisory committee, but without statutory protection there is no assurance of long-term continuation. And, to the best of our knowledge, the current composition of the committee does not include consumers, family members or advocates, which is a significant deficiency.
  - ~The package needs to be stronger on possible independent evaluation of court outcomes, and on training programs for new mental health courts. Regarding training, SCAO tells us that its funding of mental health courts provides a pathway to insist on training. But we already have a few mental health courts that aren't state-funded, and that number may grow considerably in coming years.
  - ~Participants should be assured under the law that treatment cost can be waived if there are no means to pay for it.
- This last point is so important that it requires some amplification. SCAO tells us that treatment costs are outside a court's scope. If that's the case, why is there a provision in 4695 that the court can establish participant payment responsibility for treatment? The bill then goes on to say, in effect, that courts can't waive treatment costs for the indigent. We have proposed a simple and effective way to correct this through the memorandum of agreement that courts would sign with community mental health. SCAO tells us that it is presently able to give community mental health some money for treatment in state-

funded court regions. But, once again, we already have some mental health courts that aren't state-funded, and we're going to have several more future court programs that aren't state-funded. Finally, some would say Chapter 8 of the Mental Health Code protects the indigent from treatment cost responsibility. There are differing opinions and interpretations as to how well the Mental Health Code does this, and how well the provisions are applied in practice. I would pose a simple question here: Even if everyone agreed the Mental Health Code and its application are sufficient for protecting the indigent, what would it hurt to reinforce that in this package?

We have always championed the need for Michigan to establish and grow mental health courts. While we can continue to have and grow them at least short-term without state statute, we have no problem with creating that statute at this time. But if we're going to do so, we need to take the time to assure the legislation is as good as can be. We don't think it's quite there yet, and we would be pleased to be involved in the process of making these bills even better.

Thank you for your thoughtful consideration of our views.

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September 2013

House Bills 4694-97

Suggested Revisions – August 2013

Mich. Protection & Advocacy, Mich. Partners In Crisis, & Mental Health Assn. in Mich.

HB 4694

\*Sec. 1090(A)(i) [and later in bill]: “licensed clinician,” “mental disorder,” and “co-occurring disorder” all need definition or different terminology, as these terms are not defined in the Michigan Mental Health Code. We suggest “licensed clinician” become “mental health professional,” and “mental disorder” become “serious mental illness, serious emotional disturbance, or developmental disability” (these are consistent with MH Code). We would be willing to assist with a definition of “co-occurring disorder.” {Our understanding from SCAO is that it’s willing to define at least “co-occurring disorder.” SCAO has indicated it wants broad flexibility around “mental disorder,” which is understandable, but there’s no way to avoid giving the term a definition if it remains in the package.}

\*Page 4, definition of “violent offender”: the phrase “serious bodily injury” should be defined or linked to other law that has a definition of it.

\*Pages 4-5: “representative or representatives of the local community mental health department” should be “representative or representatives from the local community mental health services program(s)” {Our understanding is that SCAO agrees.}

\*Sec. 1091 (1) & (2): add a new closing sentence to each: “The memorandum of understanding shall assure that the court has on file a participant’s individualized written plan of services, and that the court is notified of any services plan review initiated by the participant and the outcome of such review.

\*Page 6, insert new subsection between (1) and (2): “Application from an individual to participate in a mental health court program shall be based entirely on the individual’s informed voluntary consent.”

\*Page 7, subsection (C): SCAO agrees that “co-occurring disorder” needs defining. Also, this subsection should require that “assessments shall use standardized instruments that have acceptable reliability and validity according to research literature.”

HB 4695

\*Page 2, first line: delete the words “the treatment and,” as SCAO says treatment costs are not the court’s responsibility. Same subsection, add a new closing sentence – “The court’s memorandum of understanding with other cooperating entities shall assure that a community mental health services program is willing to exempt a participant from treatment cost responsibility when that participant lacks first-party means or insurance coverage to afford such costs.”

\*Page 5, subsect. (6): states that files for discharge-and-dismissal cases shall be forwarded to the state police and LEIN. Files for cases that have been deferred or dismissed should not be sent anywhere outside the court and the treating agency. {SCAO says this is being corrected, and we look forward to seeing the revision.}

\*Page 5, insert new subsection between current (6) & (7): "Upon an individual's completion of the required mental health court program participation, an exit evaluation shall be conducted in collaboration with the local community mental health services program. This evaluation shall include, but is not limited to, an assessment of the individual's continuing need for mental health, developmental disability, or substance abuse services."

\*Page 6, line 8: insert new sentence between "court" and "all" – "Except for program termination due to the commission of a new crime, failure to complete a mental health court program shall not be a prejudicial factor in sentencing."

#### HB 4694 vs. 4695

The two bills appear to contradict one another on how many times an individual could participate in a mental health court program. SCAO says this is being corrected, and we look forward to seeing the revision.

#### HB 4697

\*Add a new 1099(5): "If sufficient funding exists, the state court administrative office shall that any mental health court operating in the state has received at least one independent evaluation of its performance and outcomes."

\*New 1099A.(3): "The state court administrative office shall establish an advisory committee, consisting of relevant stakeholders including but not limited to service consumers, family members of consumers, and advocates, to monitor statewide developments regarding mental health courts. This committee shall be separate from and independent of the state's drug court advisory committee." {We recognize that SCAO has a mental health court advisory committee at present. This should be solidified in statute, as is the drug court advisory committee. Additionally, our understanding is that the current MH advisory committee does not include consumers, families or advocates. }

\*New 1099A.(4): "If sufficient funding exists, the state court administrative office and the department of community health shall assure training and technical assistance is available and provided to all mental health courts, covering topics including but not limited to the following:

- (1) curriculum development
- (2) program staff qualifications
- (3) use of incentives vs. sanctions

- (4) processes and procedures if someone does not successfully complete the mental health court program
- (5) dealing with dually diagnosed cases of serious mental illness or serious emotional disturbance and developmental disability
- (6) dealing with dually diagnosed cases of serious mental illness or serious emotional disturbance and substance abuse
- (7) coordination between mental health and drug court programs
- (8) confidentiality
- (9) interacting with persons experiencing serious mental illness, serious emotional disturbance, or developmental disability
- (10) roles, responsibilities, and service capabilities of community mental health programs”

{Note: SCAO correctly points out that any MH Court receiving state funding would have to accept training SCAO wished to provide. However, we have some MH Courts that are not state-funded, and their number is likely to grow over time. The above provision assures training will take place for MH Courts that are not dependent on state funding. }